



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

L. Preston Bryant, Jr.
Secretary of Natural Resources

West Central Regional Office
3019 Peters Creek Road, Roanoke, Virginia 24019
Telephone (540) 562-6700, Fax (540) 562-6725
www.deq.virginia.gov

David K. Paylor
Director

Steven A. Dietrich
Regional Director

STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION A SPECIAL ORDER BY CONSENT ISSUED TO QUIKRETE - MARTINSVILLE REGISTRATION NO. 30776

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code § 10.1-1307.D, 10.1-1309, and 10.1-1184, and § 10.1-1316.C, between the State Air Pollution Control Board and Quikrete – Martinsville for the purpose of resolving certain violations of State Air Pollution Control Laws and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Air Pollution Control Board, a permanent collegial body of the Commonwealth of Virginia as described in Code §§ 10.1-1301 and 10.1-1184.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Order" means this document, also known as a Consent Order.
6. "Quikrete – Martinsville" or "Quikrete" means the corporation certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.

7. "Facility" means the structure located at 930 Meadowood Trail, Martinsville, Virginia.
8. "WCRO" means the West Central Regional Office of DEQ, located in Roanoke, Virginia.
9. "Permit" means the Stationary Source Permit To Modify and Operate dated December 15, 1999.

SECTION C: Findings of Fact and Conclusions of Law

1. Quikrete - Martinsville owns and operates a facility located at 930 Meadowood Trail, Martinsville, Virginia. The facility is subject to the Stationary Source Permit To Modify And Operate dated December 15, 1999. This permit authorizes the facility to operate a pre-mixed aggregate products packaging facility.
2. On October 1, 2007, while conducting surveillance of the Quikrete – Martinsville facility, staff observed excess emissions from the large fabric filter exhaust. Staff arrived at the plant at approximately 11:15 am and met with Bill Smith, Plant Manager, and Carl Wright. The facility contact stated that the plant was in the start up phase of operation and the drum dryer was operating on No. 2 fuel oil. The visible emissions observed were 30 – 45% opacity at this time. Due to the start up condition and a change over to No. 4 fuel oil, staff left the facility at approximately 12:00 pm. Staff arrived back at the plant at 1:45 pm and again observed excess emissions from the large fabric filter exhaust. An EPA Method 9 Visible Emission Evaluation was conducted. The results of the evaluation are as follows: 1st six minutes = 32.1%, 2nd six minutes = 37.3% and the third six minutes = 35.8% opacity.
3. On October 4, 2007, a Notice of Violation was issued.
4. On October 30, 2007, the facility submitted documentation of the corrective actions taken which includes a weekly visual inspection of the bags. In addition, the emissions from the exhaust will be monitored on a daily basis and a daily check list will be implemented.

SECTION D: Agreement and Order

Accordingly the State Air Pollution Control Board, by virtue of the authority granted it pursuant to Va. Code §§10.1-1309 and 10.1-1316, orders Quikrete and Quikrete agrees to pay a civil charge of \$ 5,915.00 in settlement of the violations cited in this Order.

1. **\$ 5,915.00** of this civil charge shall be paid within 30 days of the effective date of this Order. Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia", delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Quikrete, for good cause shown by Quikrete, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves the violation specifically identified herein, including those matters alleged in the Notice of Violation issued to Quikrete on October 4, 2007. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, Quikrete admits the jurisdictional allegations, but does not admit the factual allegations or legal conclusion of law contained herein. DEQ and Quikrete agree that the actions undertaken by Quikrete in accordance with this Consent Order do not constitute an admission of liability by Quikrete. Quikrete does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Order, the validity of the Findings of Facts and Conclusions of Law contained in Section C of this order.
4. Quikrete consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Quikrete declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 9-6.14:1 *et seq.*, and the Air Pollution Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.

6. Failure by Quikrete to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Quikrete shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Quikrete shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Quikrete shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Quikrete.
11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Quikrete. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Quikrete from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. By its signatures below, Quikrete agrees to the issuance of this Order.

And it is so ORDERED this 23 day of November, 2007.

Steven A. Dietrich

Steven A. Dietrich, Regional Director
Department of Environmental Quality

Quikrete agrees to the issuance of this Order.

By: Michael Scutella

Date: 11-23-07

Commonwealth of ~~Virginia~~ North Carolina
City/County of Union

The foregoing document was signed and acknowledged before me this 23 day of
November, 2007, by Michael Scutella, who is
(name)

General Mgr. of Quikrete on behalf of the Corporation.
(title)

Donna Skuma

Notary Public

My commission expires: July 6, 2009